

Buddy Clark, Ellen Conley in Texas Bar Journal: Oil and Gas Matters

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After the decline of oil prices in the 1980s, oil and gas producing states, including Oklahoma and Texas, passed laws to protect the oil and gas interests of their royalty owners and producers by securing their rights to amounts owed for their oil and gas produced and sold. The effectiveness of these “first purchaser statutes” was first challenged three decades later when SemGroup L.P., a large pipeline and oil marketer, along with certain of its subsidiaries, including SemCrude, L.P. (collectively, “SemGroup”), filed for bankruptcy in 2008, reporting \$2.4 billion in losses trading on Nymex and over-the-counter future contracts. Texas and Oklahoma producers, as creditors of SemGroup, relied on each state’s first purchaser statutes and asserted that they were secured interest holders against SemGroup’s bankruptcy estate. SemGroup’s secured banks, its downstream purchasers, and ultimately, the bankruptcy judge, however, took a different view. The court held that the Texas and Oklahoma statutes were ineffective to prime the banks’ liens and the producers collected pennies, if anything, on what they were owed.

Oklahoma’s Legislature responded by rewriting its first purchaser statute to address the defects highlighted by the SemCrude decision. To date, Texas’ Legislature has not. A recent bankruptcy case has recognized and rewarded Oklahoma for its efforts, while affirming that Texas has yet to adequately protect its producers and royalty owners in cases where the first purchaser of their oil and gas is organized in a state other than Texas.

In the first match since *SemCrude*, the score is Oklahoma 1, Texas 0.

Excerpted from *Texas Bar Journal*. To read the full article, click [here](#).